

HERB RICHARDS CONSTRUCTION COMPANY,)	AGBCA No. 97-155-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

July 26, 1999

OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY

This appeal arose from Contract No. 50-8156-63-03 between the Forest Service, U. S. Department of Agriculture, and the Herb Richards Construction Company of Bozeman, Montana (Appellant). The contract was for the resurfacing of the Kaibab Lake Campground Road in the Kaibab National Forest in Arizona.

Appellant claimed additional costs alleging that the Government's designated source of paving material had developed a hard crust and was difficult to use, causing chunks of material to protrude through the surface. The Government's position was that other contractors had successfully utilized the material after the material was adequately processed, and that Appellant had not adequately processed the material.

The Contracting Officer (CO) denied Appellant's claim and Appellant filed a timely appeal, electing the Board's Accelerated Procedure, requiring a decision within 180 days of the election.¹

After the pleadings and Rule 4 documents² were filed, the parties' schedules did not allow the Board to meet the target date for a decision, and the Board removed the appeal from the Accelerated status. A hearing was scheduled and then canceled because of a death in the family of counsel for the Appellant. Appellant declined the opportunity to re-elect the Accelerated Procedure. A new hearing date was set and conference calls were conducted to narrow the issues.

By Notice of Settlement dated May 4, 1999, Appellant advised that the appeal had been settled, and that Appellant would move to withdraw the appeal upon receipt of the settlement proceeds. The Board has now been advised by Government counsel that Appellant had received payment and that the appeal should be dismissed.

DECISION

The appeal is dismissed as settled.

EDWARD HOURY
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
July 26, 1999

¹ 7 C.F.R. § 24.21, Rule 12.3.

² 7 C.F.R. § 24.21, Rule 4.